



OFFICE OF THE POLICE COMMISSIONER

ONE POLICE PLAZA • ROOM 1400

January 16, 2009

Memorandum for: Deputy Commissioner, Trials

Re: **Detective Daniel Scanlon**
Tax Registry No. 907273
Military and Extended Leave Desk
Disciplinary Case No. 82298/06

The above named member of the service appeared before Assistant Deputy Commissioner Robert W. Vinal on March 6, 2007 and was charged with the following:

DISCIPLINARY CASE NO. 82298/06

1. Said Detective Daniel Scanlon, assigned to the 44 Detective Squad, while on-duty, on or about August 2, 2005, at a location known to the Department, Bronx County, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that said Detective, with the intent to obtain a benefit, committed an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act was unauthorized, to wit; Detective Scanlon solicited and received oral sex from a female, identity known to the Department, on two occasions, in exchange for his expediting the processing of said female's husband through Criminal Court.

P.G. 203-10, Page 1, Paragraph 5

PROHIBITED CONDUCT

NYS PENAL LAW 195.00 - OFFICIAL MISCONDUCT

2. Said Detective Daniel Scanlon, assigned to the 44 Detective Squad, while on-duty, on or about August 2, 2005, at a location known to the Department, Bronx County, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that said Detective engaged in oral sexual conduct with a female, identity known to the Department, by forcible compulsion, in that she placed her mouth on his penis. (As amended)

P.G. 203-10, Page 1, Paragraph 5

PROHIBITED CONDUCT

NYS PENAL LAW 130.50 - CRIMINAL SEXUAL ACT

3. Said Detective Daniel Scanlon, assigned to the 44 Detective Squad, while on-duty, on or about August 2, 2005, at a location known to the Department, Bronx County, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that said Detective subjected a person, identity known to the Department, to sexual contact by forcible compulsion, in that she placed her mouth on his penis. (As amended)

P.G. 203-10, Page 1, Paragraph 5

PROHIBITED CONDUCT

NYS PENAL LAW 130.65 - SEXUAL ABUSE

4. Said Detective Daniel Scanlon, assigned to the 44 Detective Squad, while on-duty, on or about August 1, 2005, failed and neglected to notify the Desk Officer about the arrest he made upon entering the 44 Precinct with the prisoner, and failed to sign out of court as required.

P.G. 208-02, Page 1, Paragraph 3
P.G. 206-03, Page 1, Paragraph 24

**ARREST PROCESSING
VIOLATIONS**

5. Said Detective Daniel Scanlon, assigned to the 44 Detective Squad, while on-duty, on or about November 6, 2005, within the 44 Precinct, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that said Detective engaged in oral sexual conduct with a female, identity known to the Department, by forcible compulsion, in that she placed her mouth on his penis.

P.G. 203-10, Page 1, Paragraph 5
NYS PENAL LAW 130.50 - CRIMINAL SEXUAL ACT

PROHIBITED CONDUCT

6. Said Detective Daniel Scanlon, assigned to the 44 Detective Squad, while on-duty, on or about November 6, 2005, within the 44 Precinct, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that said Detective subjected a female, identity known to the Department, to sexual contact by forcible compulsion, in that she placed her mouth on his penis.

P.G. 203-10, Page 1, Paragraph 5
NYS PENAL LAW 130.65 - SEXUAL ABUSE

PROHIBITED CONDUCT

7. Said Detective Daniel Scanlon, assigned to the 44 Detective Squad, while on-duty, on or about November 6, 2005, within the 44 Precinct, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that said Detective intentionally, and for no legitimate purpose, forcibly touched the sexual or other intimate parts of a female for the purpose of degrading or abusing said female, or for the purpose of gratifying his sexual desire, to wit; Detective Scanlon grabbed said female's breast.

P.G. 203-10, Page 1 Paragraph 5
NYS PENAL LAW 130.52 - FORCIBLE TOUCHING
NYS PENAL LAW 130.65 - SEXUAL ABUSE

PROHIBITED CONDUCT

8. Said Detective Daniel Scanlon, assigned to the 44 Detective Squad, while on-duty, on or about November 6, 2005, within the 44 Precinct, did knowingly associate with a person, identity known to this Department, believed to be engaged in, likely to engage in, or to have engaged in criminal activities in that Detective Scanlon engaged in oral sexual conduct with a person who was in custody for a crime, and Detective Scanlon was involved in said person's arrest processing.

P.G. 203-10, Page 1, Paragraph 2

PROHIBITED CONDUCT

9. Said Detective Daniel Scanlon, assigned to the 44 Detective Squad, while on-duty, on or about November 6, 2005, failed and neglected to notify the Desk Officer about the arrest he made upon entering the 44 Precinct with the prisoner, failed to make required entries in Detective Squad Arrest Log, and failed to make Activity Log entries documenting the arrest as required.

P.G. 208-02, Page 1, Paragraph 3

P.G. 206-03, Page 1, Paragraph 6

P.G. 206-03, Page 1, Paragraph 7

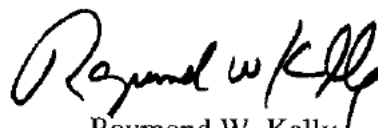
**ARREST PROCESSING
VIOLATIONS
VIOLATIONS**

In a Memorandum dated October 31, 2007, Assistant Deputy Commissioner Robert W. Vinal found the Respondent GUILTY of Specification Nos. 2, 5, 6, 7 and 8; Guilty in Part of Specification Nos. 1, 4 and 9; and Dismissed Specification No. 3. Having read the Memorandum and analyzed the facts of these instant matters, I approve the findings, but disapprove the penalty.

The executed misconduct compromises Respondent Scanlon's ability to remain a viable member of this Department; thus, his immediate separation from the Department is required. However, based on Respondent Scanlon's otherwise excellent service and performance history, I will permit at this time, an alternative manner of separation in lieu of summary dismissal, as was recommended by Assistant Deputy Commissioner Vinal.

It is therefore directed that a post-trial vested-interest retirement agreement be implemented with the Respondent. In consideration of such, Respondent Scanlon is to remain, and to separate from the Department, on a continued suspended duty status. The Respondent is to also forfeit all suspension days since served and to be served, including all accrued leave and time balances, and will immediately be placed on a One-Year Dismissal Probation period.

Such vested-interest retirement shall also include Respondent Scanlon's written agreement to not initiate administrative applications or judicial proceedings against the New York City Police Department to seek reinstatement or return to the Department. If Respondent Scanlon does not agree to the terms of this vested-interest retirement as noted, this Office is to be notified without delay. This agreement is to be implemented **IMMEDIATELY.**


Raymond W. Kelly
Police Commissioner



POLICE DEPARTMENT

October 31, 2007

-----X
In the Matter of the Charges and Specifications

: Case No. 82298/06

- against -

Detective Daniel Scanlon

Tax Registry No. 907273

Military & Extended Leave Desk
-----X

At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable Robert W. Vinal
Assistant Deputy Commissioner - Trials

APPEARANCE:

For the Department: Daniel Maurer, Esq.
Department Advocate's Office
One Police Plaza
New York, New York 10038

For the Respondent: Peter Brill, Esq.
Karasyk & Moschella, LLP
225 Broadway, 32nd Floor
New York, New York 10007

To:

HONORABLE RAYMOND W. KELLY
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

COURTESY • PROFESSIONALISM • RESPECT

The above-named member of the Department appeared before me on March 6, 2007 and on June 1, 12 and 13, 2007, charged with the following:

1. Said Detective Daniel Scanlon, assigned to the 44 Detective Squad, while on-duty, on or about August 2, 2005, at a location known to the Department, Bronx County, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that said Detective, with the intent to obtain a benefit, committed an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act was unauthorized, to wit; Detective Scanlon solicited and received oral sex from a female, identity known to the Department, on two occasions, in exchange for his expediting the processing of said female's husband through Criminal Court.

P.G. 203-10, Page 1, Paragraph 5 - PROHIBITED CONDUCT
NYS PENAL LAW § 195.00 - OFFICIAL MISCONDUCT

2. Said Detective Daniel Scanlon, assigned to the 44 Detective Squad, while on-duty, on or about August 2, 2005, at a location known to the Department, Bronx County, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that said Detective engaged in oral sexual conduct with a female, identity known to the Department, by forcible compulsion, in that she placed her mouth on his penis. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT
NYS PENAL LAW § 130.50 - CRIMINAL SEXUAL ACT

3. Said Detective Daniel Scanlon, assigned to the 44 Detective Squad, while on-duty, on or about August 2, 2005, at a location known to the Department, Bronx County, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that said Detective subjected a person, identity known to the Department, to sexual contact by forcible compulsion, in that she placed her mouth on his penis. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 - PROHIBITED CONDUCT
NYS PENAL LAW § 130.65 - SEXUAL ABUSE

4. Detective Daniel Scanlon, assigned to the 44 Detective Squad, while on-duty, on or about August 1, 2005, failed and neglected to notify the Desk Officer about the arrest he made upon entering the 44 Precinct with the prisoner, and failed to sign out of court as required.

P.G. 208-02, Page 1, Paragraph 3 - ARREST PROCESSING
P.G. 206-03, Page 1, Paragraph 24 - VIOLATIONS

5. Said Detective Daniel Scanlon, assigned to the 44 Detective Squad, while on-duty, on or about November 6, 2005, within the 44 Precinct, engaged in conduct

prejudicial to the good order, efficiency and discipline of the Department in that said Detective engaged in oral sexual conduct with a female, identity known to the Department, by forcible compulsion, in that she placed her mouth on his penis.

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NYS PENAL LAW § 130.52 - FORCIBLE TOUCHING
NYS PENAL LAW § 130.65 - SEXUAL ABUSE

8. Said Detective Daniel Scanlon, assigned to the 44 Detective Squad, while on-duty, on or about November 6, 2005, within the 44 Precinct, did knowingly associate with a person, identity known to this Department, believed to be engaged in, likely to engage in, or to have engaged in criminal activities in that Detective Scanlon engaged in oral sexual conduct with a person who was in custody for a crime, and Detective Scanlon was involved in said person's arrest processing.

P.G. 203-10, Page 1, Paragraph 2 – PROHIBITED CONDUCT

9. Said Detective Daniel Scanlon, assigned to the 44 Detective Squad, while on-duty, on or about November 6, 2005, failed and neglected to notify the Desk Officer about the arrest he made upon entering the 44 Precinct with the prisoner, failed to make required entries in Detective Squad Arrest Log, and failed to make activity log entries documenting the arrest as required.

P.G. 208-02, Page 1, Paragraph 3 – ARREST PROCESSING
P.G. 206-03, Page 1, Paragraph 6 - VIOLATIONS
P.G. 206-03, Page 1, Paragraph 7 - VIOLATIONS

The Department was represented by Daniel Maurer, Esq. Department Advocate's Office, and the Respondent was represented by Peter E. Brill, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Guilty of Specification Nos. 2 and 5 through 8. The Respondent is found Guilty in part of Specification Nos. 1, 4 and 9. It is recommended that Specification No. 3 be Dismissed.

EVIDENCE

The Department's Case

The Department called Elba Negroni and Rosa Linares¹ as witnesses.

Elba Negroni

Negroni, who is [REDACTED], resides in an apartment at [REDACTED]. [REDACTED]

[REDACTED]. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹ Linares testified via video conferencing.

On July 27, 2005, inside their apartment, she and [REDACTED] argued and he punched her with his fists. Negroni called 911 but [REDACTED] left before uniformed officers arrived. The responding officers took her complaint and her telephone number.

On July 30, 2005, the Respondent telephoned her and told her to come to the 44 Precinct to identify [REDACTED]. [REDACTED] accompanied her to the 44 Precinct Station House, which is about seven blocks from her residence. The Respondent showed her a photograph of [REDACTED] and she identified [REDACTED]. The Respondent complimented her regarding her pierced ears and her earrings. He told her to bring [REDACTED] to the 44 Precinct Detective Squad (44 PDS) on the following Monday.

On Monday, August 1, 2005, Negroni and [REDACTED] went to the 44 Precinct Detective Squad. After the Respondent brought [REDACTED] alone into a room, the Respondent came out and told Negroni to wait outside the room. The Respondent later told her that [REDACTED]'s processing "will take some time" and advised her to "go home." Negroni recalled that between 4:00 p.m. and 5:00 p.m. that afternoon, the Respondent came to her residence and dropped off [REDACTED]'s personal effects, his wallet and keys, that were on his person when he surrendered at the 44 Precinct Detective Squad that day. Negroni testified that the Respondent told her to "be in court" that evening.

She recalled that she arrived at the Bronx courthouse at about 6:30 p.m., and while she was waiting to speak to the assistant district attorney, the Respondent made her feel "uncomfortable" by being "too nice" to her and by flirting with her by "making eyes at me" and smiling at her and looking her "up and down." He offered to walk her downstairs. She had just read and signed a statement and she saw that the Respondent's first name was Daniel. As they were walking, she stated, "Oh, your name is Daniel."

He asked her, "Do you like the name?" She told him that "it is a nice name." When they got outside, the Respondent asked Negroni, "Do you want to hang out?" Negroni testified that she thought he meant "take a ride or something." She told him "not really." She offered to give him change to give to [REDACTED] so that he could call her from jail, but the Respondent told her not to worry and that he would give [REDACTED] a couple of quarters. He left and told her to wait for him in front of the Criminal Court building. Fifteen minutes later, he reappeared and asked her "if he could take me home." When they arrived at Negroni's residence, the Respondent asked her, "Can I come upstairs? It would be in your best interest." Negroni testified that she assumed that the Respondent was going to tell her something relating to [REDACTED] and so she told him that he could come upstairs to her apartment.

When they were inside the apartment, the Respondent asked her, "Are you alone?" Negroni responded, "Yes," because she was not aware that her roommate [REDACTED] was inside her bedroom because no light was on in her bedroom. Negroni recalled that the Respondent sat down on the sofa in the living room and that she handed the Respondent the remote control for the television set. The telephone rang. When Negroni picked it up, it was [REDACTED] calling her. [REDACTED] told her that he would be "spending the night in jail" until he could be arraigned on an open 1985 warrant and that she should call an airline and change the flight that he had arranged for the next day. After [REDACTED] hung up, Negroni told the Respondent, "Listen. I smoke weed." After the Respondent told her, "Okay," Negroni then smoked "a joint" in his presence. She walked over and

opened a window to let the smoke out. The Respondent told her, "I can get your husband out of jail if you give me something." The Respondent then told her he wanted a "blow job." Because she believed that if she gave the Respondent a "blow job" it would help [REDACTED] she did so. She recalled that the Respondent pulled her hair during the "blow job," that he ejaculated into a tissue and then put the tissue in his pocket. The act made her feel "like a piece of meat."

She testified that after the "blow job," but before the Respondent left, she called out [REDACTED]'s name and she came out of her bedroom. The Respondent then told her, "I thought you said you were alone." Negroni testified that she did not tell her friend what had happened. The Respondent then left. When she was asked if she had felt threatened by the Respondent, Negroni responded, "He's a detective with a gun."

Negroni testified that the next day, August 2, 2005, she was alone at home between 8:00 a.m. and 9:00 a.m., when the Respondent telephoned her at her residence. He told her, "I need to see you before court." Negroni agreed that he could come over to her residence. She then combed her hair and brushed her teeth. About ten minutes later, she let the Respondent into her apartment. He told her that he was on his way to court to get [REDACTED] out of jail and that he was thinking about her and how sexy she was and that he wanted another "blow job." She told him, "No." He then unbuttoned his jacket and "started fiddling with his gun" by touching and tapping it. She became "scared" and felt she had no choice but to comply. She told him that she wanted him to "use protection." He told her, "No. I'm not sick." After she had performed oral sex on him, he ejaculated into a tissue and then put the tissue in his pocket. He told her, "Your husband should be home soon." He then asked her, "You're not going to tell anybody about this, right?"

Because nobody can stop a bullet." He left. He had been inside the apartment ten to 15 minutes.

After [REDACTED] got out of jail, the Respondent telephoned Negroni three to five times. Once when [REDACTED] picked up the phone, she heard him ask the Respondent, "Why are calling our house?" [REDACTED] told her that the Respondent had explained, "I want to know if your wife is okay." [REDACTED] asked her why the Respondent wanted to know if she was okay. She then told him what the Respondent had made her do for him. When Negroni was asked if she knew [REDACTED]'s present whereabouts, she testified that

[REDACTED]

[REDACTED]

On cross-examination, Negroni testified that she has smoked marijuana "once or twice a week" since she was a teenager. She testified that she buys marijuana when she has enough money. She acknowledged that she has had [REDACTED] problems which have been diagnosed as [REDACTED]. [REDACTED]

[REDACTED]

[REDACTED]

She acknowledged that she has a prior criminal record for engaging in prostitution and for drug use, and that she is sometimes forgetful. She acknowledged that she had previously told the Assistant Department Advocate that she was unable to appear to testify at trial because at that time she had personal problems which have now been resolved.

Rosa Linares

Linares, who is presently a nursing student who attends school everyday, [REDACTED]

[REDACTED]. Linares testified that she had been involved in an altercation with a woman named [REDACTED] who had come to Linares's building "looking for problems." Linares testified that during their altercation she had only defended herself from [REDACTED]

Linares recalled that on November 6, 2005, she was inside her residence when she answered a knock on her door and when she answered the knock on her door she observed two detectives. The Respondent identified himself and told her that he had come to her residence to "pick me up." The Respondent told her that this was a "normal process" and that he needed her to come to the 44 Precinct Station House regarding "routine procedures" involving "paperwork." Linares testified that based on what the Respondent told her, she was not aware that she was going to be arrested that day.

She recalled that she told the Respondent that she needed to change her clothes. She went into her bedroom and began changing out of her "sleeping clothes" and into her jeans. As she was changing, the Respondent entered her bedroom alone and then left. When they arrived at the 44 Precinct, the Respondent asked her whether she considered him attractive. She recalled that the Respondent took her photograph and also took her fingerprints. She testified that the Respondent told her, "I can make records and paperwork disappear." He assured her that he could "make everything disappear" and that there would be no record that she had been there at all. The Respondent asked her a number of times whether she had to use the bathroom. Each time he asked, she responded that she did not need to go to the bathroom. Finally, after she had been inside

the station house for some time, she told him that she needed to use the bathroom. She entered a small bathroom that the Respondent directed her to and she closed the door. There was no lock on the door. The Respondent "kept knocking on the door." He continually asked her through the door, "Are you okay?" Each time she responded, "Yes." He also continually asked her whether she "needed anything" and she responded, "No," three times. As she was facing the sink, with the entry door to the left and the toilet to her right, the Respondent opened the door, entered the bathroom and closed the door. She testified that if there had been a lock on the bathroom door, she would have locked the door. The Respondent placed his hands on her and "turned me around" so that she was "right in front of him" as he "stood with his back to the door" blocking the door. Linares recalled that she felt "intimidated." She testified that, "I did not have the courage. I wish I had." The Respondent licked her lips with his tongue. He "grabbed my breasts" and touched her. He then told her, "Suck my dick." The Respondent unzipped his fly, opened his pants and took out his penis. He did not drop his pants to the floor. She bent down, but she did not fall to her knees. She "looked at it and licked it" and "put it in my mouth once but then I just told him I wanted to leave because I was so uncomfortable." She "felt nasty." He "zipped up" his pants and brought her out of the bathroom back into the office area. When he finished his paperwork he told her that he wanted to take her home. She told him that "it was all right" and she left on her own.

She testified that she did not immediately report what had happened because she was "scared" because the Respondent "had power over me, over my record. He still had my case." On March 16, 2006, she walked into a police facility, asked to speak to a female officer and reported what the Respondent had done to her on November 6, 2005.

On cross-examination, Linares testified that she moved [REDACTED]

[REDACTED]. She testified that FBI agents had transported her to the United States Attorney's office [REDACTED] so she could testify via video conferencing. She acknowledged that the Assistant Department Advocate had sent her a "warrant" to testify, but she asserted that she was not testifying solely because of this subpoena because "if I didn't want to be here, I would not be here." She asserted that she was testifying because "I don't want what happened to me to happen to anyone else." She stated that she had "trusted" the Respondent and that he "had the power" and that he "used me" and "manipulated me." She stated that testifying was "aggravating" because "I don't want to think about" what happened to her in the bathroom on November 6, 2005. She asserted that she had appeared to testify because "I know I'm doing the right thing" by testifying against the Respondent.

Linares recalled that her altercation with [REDACTED] occurred on October 25, 2005. She testified that she and [REDACTED] were co-workers but not friends. She asserted that after she had filed a complaint against [REDACTED] [REDACTED] had retaliated by alleging that she had assaulted [REDACTED]. Linares testified that during their altercation she bit [REDACTED] but that she had only done this in "self-defense."

Linares was asked why after October 25, 2005, she had placed 165 telephone calls to [REDACTED] Nursing Home. Linares testified that she had made these calls not for the purpose of talking to [REDACTED] but in order to speak to friends who were still on the staff there. Linares asserted that she had resigned her position at the nursing home, she was not fired. [REDACTED] was asked whether she owed \$1,000 to a [REDACTED] landlord whose

apartment she had vacated. She testified that she did not owe the landlord any money because she only took a couple of days to move out of the apartment and because the landlord had told her he would not charge rent for her last month. Linares acknowledged that she had told the Respondent that she wanted to obtain an Order of Protection against [REDACTED]. She testified that when she went to court, the charge that [REDACTED] brought against her was dismissed. She testified that she paid a "fifty dollar penalty" and that the charges "would be dropped."

Linares recalled that Sergeant Inserra transported her to the district attorney's office where she was interviewed by a female assistant district attorney. She testified that no one ever told her why the Respondent was not arrested based on her allegation.

Linares was asked why, over the five-month period between October 25, 2005 and April 4, 2006, she had placed 38 calls to the 44 Precinct from her cell phone. She testified that she placed these calls because "I was concerned about my case. Because I was concerned about what would happen to me." When Linares was asked whether she considered this number of calls to be excessive, she testified that they were not excessive because the Respondent had not been present at the station house on most of the occasions when she had called and asked to speak to him. When she was asked why she had delayed reporting her allegation against the Respondent, she testified that she waited until "after he had no more power over my case." She testified that the Respondent had told her that [REDACTED] wanted to drop charges against her and that the Respondent therefore wanted her to drop the charges she had brought against [REDACTED].

Linares testified that she used her cell phone after this incident to make calls to the Respondent at the 44 PDS. Linares acknowledged that when she spoke to other

police officers who answered the phone, she did not tell them what the Respondent had done because "this was embarrassing." She testified that she was "scared and intimidated" because "I didn't know what he was able to do" to her. She denied that she had ever engaged in oral sex with [REDACTED] in a bathroom at her place of employment. She testified that after she had filed her complaint against the Respondent, she was informed that someone else had made an allegation against the Respondent but that she was not told what the allegation was and to this day she has "no clue" as to who the other complainant is. Linares testified that after she was informed that the charges that had been lodged against the Respondent based on her complaint were dropped, she stated "I am not lying."

The Respondent's Case

The Respondent called Detectives Robert Nardi, Leslie Santiago and Angela Castellano, Sergeant Michael Inserra, Cadet Curtis Cato, Detective Janet Morales, Lieutenant James Ruane, Detective Steven Smith and Detective Camilo Delgado as witnesses and he testified in his own behalf.

Detective Robert Nardi

Detective Nardi, assigned to the 44 Precinct Detective Squad, testified that on August 2, 2005, he worked an 8:00 a.m. to 4:00 p.m. tour of duty partnered by the Respondent. To refresh his recollection of what they did that day, Nardi referred to a "DD5" that indicated that at 9:10 a.m. that morning he and the Respondent went to [REDACTED], which is located in the 52 Precinct. When Nardi was asked

whether he and the Respondent had made a stop at [REDACTED], he testified that he had no recollection of them stopping there. He testified that he was with the Respondent for two hours that morning and that the Respondent never left his side. They returned to the 44 Precinct Station House together. Nardi testified that he considers the Respondent to be an extremely honest individual.

On cross-examination, Nardi testified that to the best of his recollection, the Respondent made no telephone calls while they were working together that morning. Nardi conceded that he did not know whether the Respondent made any telephone calls from the 44 Precinct Detective Squad before they left for the field. Nardi acknowledged that a detective driving to [REDACTED] would pass [REDACTED] on the way to [REDACTED]. Nardi had no independent recollection of what route he and the Respondent took when they drove to [REDACTED] or whether they stopped en route to that address.

Detective Leslie Santiago

Detective Santiago, assigned to Internal Affairs Bureau Group No. 21, testified that during September, 2005, she responded to a "call out" regarding a complaint made by Negroni. She recalled that Lieutenant Ralph Nieves, a detective assigned to the Special Victims Unit, went with her. She recalled that Negroni complained that her husband had been arrested by the Respondent and that the Respondent had offered to help. Santiago recalled that during her initial interview, Negroni told them that she had willingly complied with the Respondent's request that she provide oral sex because he offered to get [REDACTED] out of jail. Santiago recalled that when Negroni was interviewed

a second time the next day, Negroni told them that she had "said no," but that she had complied with the Respondent's request for oral sex when he started to fiddle with his firearm. Santiago testified that the interviews of Negroni were tape recorded and that the tape recordings were placed into the "call out" file. Santiago acknowledged that she and the Respondent are friends and that they were once "romantically involved."

On cross-examination, Santiago testified that she and the Respondent ended their romantic relationship when they mutually agreed to split up.

Detective Angela Castellano

Detective Castellano testified that on September 16, 2005, she was present at the Bronx County District Attorney's office participating in the "second day of a 'call out.'" Castellano recalled that she and Sergeant Icone picked up Negroni at her residence and brought her to the Bronx District Attorney's office.

She testified that she was present when an assistant district attorney interviewed Negroni. She recalled that this interview was not tape recorded. She recalled that Negroni told the ADA that she suffered from [REDACTED], that she has [REDACTED], and that she has "s [REDACTED]" She recalled that Negroni acknowledged that she had attempted to [REDACTED] three times in the past six months. She testified that Negroni told the ADA that she had felt "chemistry" between herself and the Respondent and that it appeared that Negroni liked the Respondent. Negroni told the ADA that she had flirted with the Respondent and that he had flirted with her. Negroni also stated that when the Respondent had come to her

residence he “woke me up early.” Negroni told the ADA that she had only realized that she was a victim after she had told her [REDACTED] about this incident.

On cross-examination, Castellano testified that Sergeant Icone had prepared an interview report regarding the questions the ADA asked Negroni. Castellano acknowledged that this interview report was a synopsis, in Sergeant Icone’s own words, of what Negroni told the ADA.

Sergeant Michael Inserra

Sergeant Inserra testified that the Bronx County District Attorney’s office had declined to prosecute both Negroni’s and Linares’s complaints. Inserra recalled that an IAB worksheet prepared regarding the no prosecution decision concerning Negroni’s complaint indicated that the ADA had stated that the case was not prosecutable because of “lack of fear” on the part of the complainant Negroni.

With regard to Linares’s complaint, the ADA stated that the three interviews that were conducted of Linares on the same day indicated that there was a “discrepancy” in that during the second interview Linares had “added information.” Inserra testified that Linares had stated that the Respondent had asked her “Do I look nice?”

Inserra testified that when he interviewed Nardi, he was unable to recall what locations he and the Respondent had gone to on August 2, 2005. Inserra recalled that he examined the movement log at the 44 Precinct Detective Squad and that the log entry was not consistent with Nardi’s “DD5” regarding where he and the Respondent had gone that day. Inserra acknowledged that the two complainants lived near each other, about four blocks apart, but that Negroni had stated that she did not know who Linares was and that Linares had stated that she had never met Negroni. Inserra recalled that Negroni had

stated that she had felt threatened by the Respondent because he was fiddling with his gun. He recalled that the Respondent had received a complimentary letter regarding his police work from a nursing home where Linares had worked. Inserra recalled that Linares had requested that he provide her with updates on the progress of his investigation and that she had asked him, "What's taking so long?" He recalled that she appeared to be happy and satisfied when he told her that the only thing that remained for him to do in his investigation was to interview the Respondent.

Inserra recalled that he tested the veracity of Linares's allegation by asking her, "Are you making this up?" Linares answered, "No." Inserra recalled that Linares was concerned about her criminal case and that Linares telephoned the Bronx DA's office "a lot." He recalled that Linares called the Respondent at the 44 Precinct Detective Squad even after Inserra had told her that she should not do that.

On cross-examination, Inserra testified that although he met with the ADA who declined prosecution of Linares's complaint against the Respondent, he acknowledged that he never met with the ADA who declined prosecution on Negroni's complaint against the Respondent. Inserra recalled that the only "discrepancy" that the ADA had cited to him regarding the three interviews that were conducted of Linares on the same day, was that she stated in one interview that she and the Respondent had taken the elevator, not the stairs.

He also recalled that the ADA noted that Linares had stated that even at the point when she was being fingerprinted by the Respondent, she did not know that she was being arrested at that time.

Cadet Curtis Cato

Cadet Cato, who worked at the 44 Precinct Detective Squad answering the phone for five days a week, recalled that a woman who identified her last name as Linares would call the 44 PDS and ask to speak to the Respondent.

He recalled that sometimes she called four or five times a day and that when he told her that the Respondent was not available to speak to her, she "would be upset" and that she would "yell obscenities" in an "irate" manner.

On cross-examination, Cato acknowledged that no telephone log of incoming calls is kept in the 44 PDS. He testified that each time she called, Linares would ask him to tell the Respondent to call her. He testified that on each occasion Linares called, she indicated that she needed to speak to the Respondent about a police matter and that she was not calling regarding a personal matter.

Detective Janet Morales

Detective Morales, who is assigned to the 44 Precinct Detective Squad, testified that the bathroom located in the 44 PDS is used frequently by women during the period from 4:00 p.m. to 6:00 p.m. Morales identified a photograph of the interior of this small bathroom (RX A).

On cross-examination, Morales testified that female members of the service do not use this bathroom and that this bathroom is used by female visitors, such as complainants, and by female prisoners.

Lieutenant James Ruane

Lieutenant Ruane testified that he has supervised the Respondent's work and that he recommended that the Respondent be promoted to Detective Second Grade. He testified that he had given the Respondent a performance rating of 5.0 which he described as "way" above average. Ruane recalled that when Linares came to the 44 Precinct Detective Squad on March 16, 2006, he spoke to her. He recalled that Linares told him that in October, 2005, the Respondent had arrested her. Ruane testified that at about this time he had noticed an article in a newspaper which described an oral sex "dominatrix" and that he had mentioned this article to the Bronx Inspections Unit. Ruane testified that when he arrived at the 44 PDS, he learned that there was a prior tradition of not having 44 PDS arrests logged in at the 44 Precinct desk log on the first floor. He testified that he continued this tradition and that he instructed the members under his command not to log their arrests at the 44 Precinct desk log.

On cross-examination, he testified that when he spoke to Linares she never used the word rape to describe what the Respondent had done to her.

Detective Steven Smith

Detective Smith, who has been assigned to the 44 Precinct Detective Squad for the past three years, testified that on November 6, 2005, he accompanied that Respondent to Linares's apartment. He recalled that the Respondent had told him that they were going there regarding a "possible arrest situation." Smith recalled that when Linares answered the knocks on the apartment door, the Respondent told her that they wanted her to come back to the station house with them. Smith recalled that Linares was respectful

and compliant. She stated that she wanted to change clothes before leaving with them. Smith testified that he stayed in the vestibule area and that the Respondent stood at the threshold of the doorway. Smith testified that he had no recollection of having lost sight of the Respondent while they were inside the apartment. After she had changed, Linares accompanied them to the station house.

On cross-examination, Smith recalled that the Respondent had stated, "I got to pick up this girl." Smith testified that while he was standing in the vestibule he was moving around. Smith recalled that Linares took an extended period of time changing clothes. He did not go to find out what was taking so long. He testified that he made no activity entry in his Activity Log with regard to going to Linares's apartment with the Respondent nor did he prepare a worksheet. He was testifying by relying on his memory of this event.

Detective Camilo Delgado

Detective Delgado, who is assigned to the Bronx Special Victims Unit, testified that it is the unit's practice to interview complainants at their office. Delgado recalled that during September, 2005, he was involved in a "call out" with Detective Rosado. He testified that he responded to a residence in the Bronx and that he and Rosado were there to assist investigators from the Internal Affairs Bureau.

At this residence, he interviewed Negroni who was present with her husband, [REDACTED]. Delgado recalled that he directed [REDACTED] to go to a bedroom and stay there while he interviewed Negroni alone in the living room. After [REDACTED] left the room, he began to question Negroni who appeared to him to be very nervous. He

recalled that Negroni asked him, "If I say something that is not true, can I be arrested?" Delgado recalled that he responded by telling Negroni, "In these types of cases we normally do not arrest complainants." Negroni then recanted her original claim that she had been forced to perform oral sex. Negroni told Delgado that when she had performed oral sex on the Respondent, she had engaged in the act voluntarily. Negroni told Delgado that her husband had told her to claim that she had been forced to perform oral sex. Delgado recalled that about one-half hour into this interview [REDACTED] came out of the bedroom and into the living room. Delgado told him that he had to go back into the bedroom, but he refused. His refusal effectively ended the interview.

Delgado recalled that an IAB lieutenant and a female detective were present during the interview. The lieutenant told him that IAB often conducted interviews at a complainant's residence. Delgado testified that since he had been present at the interview only to assist IAB, he took no notes and he prepared no report of the interview. He recalled that Negroni stated during the interview that she was afraid of her husband.

On cross-examination, Delgado testified that he informed the IAB lieutenant of what Negroni had told him. He testified that he learned for the first time in June, 2007, that Negroni had originally alleged that the Respondent had forced her to perform oral sex on him. Delgado acknowledged that during his interview of Negroni, she did not state that she had made up the allegation that she had performed oral sex on a detective. Delgado testified that it was his experience as a Special Victims investigator that complainants who recant usually make an entire recantation immediately, rather than in stages.

The Respondent

The Respondent testified that while he was assigned to the 44 Precinct Detective Squad on August 1, 2005, he arrested [REDACTED] based on a complaint report that had been filed against [REDACTED] by Negroni, who came to the 44 PDS with [REDACTED], alleging that he had assaulted her during a domestic dispute. He also discovered that [REDACTED] had an outstanding warrant.

The Respondent recalled that after Negroni told the Assistant District Attorney that she did not want to pursue charges against [REDACTED] Negroni asked him what his first name was and then asked him if he would give her a ride back to her residence. The Respondent drove Negroni to her residence. Negroni told him that she did not want to be with [REDACTED] and that she wanted him out of her life.

She asked him more than once when [REDACTED] was going to get out of jail and whether there was anything he could do "to make it quicker" so that his processing could be speeded up so that he would not miss his flight. He told her that it was not up to him and that the judge presiding at arraignments would decide if [REDACTED] was going to get out of jail. He drove her to her apartment building on [REDACTED] [REDACTED]. Because she told him that she was afraid that someone might be waiting inside her apartment to hurt her for having [REDACTED] arrested, he entered her apartment with her. A door was closed inside the apartment, but he did not open it. He "looked around" to see if anyone else was inside the apartment and saw "nobody" there. He and Negroni were only alone together inside the living room for "a couple of minutes" until a female "eventually" came out into the living room. He introduced himself to her. Negroni offered him information about a shooting, a possible homicide. Then he left.

A couple of days later, since he had not heard from Negroni, he telephoned her but no one answered the phone.

He denied that he went to Negroni's apartment the day after [REDACTED]'s arrest. He was partnered with Nardi on August 2, 2005, and they went to a location on the "upper end" of the [REDACTED] that day. They did not enter into the movement log every address they may have gone to that day. The Respondent called Negroni "a couple of days later." [REDACTED] answered the phone and asked him why he was calling Negroni. The Respondent denied that he had any sexual contact of any kind with Negroni. He testified that he was present inside Negroni's apartment only on the single occasion when he drove her home.

The Respondent testified that he arrested Linares based on a cross-complaint that was filed by [REDACTED] alleging that Linares had bit her. Linares had alleged that [REDACTED] had assaulted her. The Respondent testified that when he arrested [REDACTED] based on Linares's complaint, he observed bite marks on [REDACTED]. As a result, he conducted a misdemeanor arrest of Linares inside the 44 Precinct Detective Squad on November 6, 2005. When Linares arrived there, he told her that he had observed bite marks on [REDACTED]. The Respondent testified that Linares knew that she was being arrested that day and that she was upset that she was being charged because she felt that she had been the victim of an assault by [REDACTED]. The Respondent recalled that Linares had made a complaint against her employer's human resources director because the director had refused to fire [REDACTED] after their altercation.

The Respondent testified that when Linares asked to use the bathroom, he escorted her to the women's bathroom on the second floor. He knocked on the door of

the bathroom to insure that no one was inside. He then told Linares, "Go in." She entered alone and closed the door. He waited outside the door. Because she was taking a "long time" inside the bathroom, he knocked on the door and asked her, "Are you all right?" She finally came out. He denied that he ever entered the bathroom and he denied that he had told Linares to perform oral sex on him inside the bathroom.

On cross-examination, the Respondent acknowledged that Negroni had asked him on August 1, 2005, whether the processing of her husband could be speeded up so that he would not miss his flight. When he was asked whether he and Nardi had made multiple stops at locations on and the Grand Concourse on August 2, 2005, he responded that they "went to Detective Nardi's place, I think it's the [REDACTED] at the upper end of the [REDACTED] [REDACTED] among other stops...it could be anywhere."

The Respondent testified that he was on duty on March 16, 2006, and that he was at the 44 PDS when he was informed that Linares had just come into the 44 Precinct and had filed a complaint against him. He then decided to take "personal," not sick, lost time and left the 44 Precinct and went home. The Respondent explained that he did not even attempt to find out why Linares' was filing a complaint against him because "at that time I didn't think anything of it, because there was no reason for me to be worried, because there was nothing outside of proper procedure that would cause me to get a complaint. I figured she would go in there and complain that her case hadn't been handled properly, something along those lines. It's not really a complaint."

The parties stipulated that the command log at the front desk of the 44 Precinct covering the period from November 5, 2005 through November 6, 2005, contains no

entries regarding Rosa Linares. The parties further stipulated that the 44 Precinct Detective Unit log covering the period November 5, 2005 through November 6, 2005, contains no entry regarding the arrest of Rosa Linares. The parties further stipulated that between October 31, 2005 and April 4, 2006, Linares placed 38 telephone calls from her cell phone to telephones located within the 44 Precinct Detective Squad.

The parties also stipulated that the command log at the front desk of the 44 Precinct contains no entry regarding the Respondent's arrest of [REDACTED] during the period July 31, 2005 to August 1, 2005. The parties stipulated that on August 1, 2005, the Bronx Criminal Court prisoner log contains an entry signed by the Respondent that he was present there at "1730" hours. There is no entry regarding a sign-out time entered by the Respondent. The parties also stipulated that on August 1, 2005, five calls were placed from a telephone at the 44 Precinct Detective Squad to the telephone located inside Negroni's residence and that these telephone calls were placed from the Respondent's desk at the 44 PDS.

FINDINGS AND ANALYSIS

Specification Nos. 1, 2, 5, 6, 7, 8

Initially, I will discuss Linares' testimony. Although Linares testified at this trial via video conferencing, the quality of both the visual (on a large screen TV with a clear picture) and audio transmission was of such a high level that, except for the lack of her actual physical presence in the same room and a slight time delay between questions and answers, this video conference testimony was the functional equivalent of live testimony in the trial room because the parties were able to clearly observe Linare's demeanor and

body language and hear the inflection of her voice as she answered the questions posed to her. Although her testimony was briefly interrupted on several occasions due to initial transmission difficulties, these brief interruptions had no more effect on the testimony than those occasions in the trial room when the stenographer requests a brief pause in the testimony to fix an equipment problem.

With regard to the substance of Linares' testimony, the Respondent corroborated Linares' testimony that while they were inside the 44 Precinct, she told him that she needed to use the bathroom, that he escorted her down to the women's bathroom on the second floor and that while she was inside the bathroom he knocked on the door and asked her, "Are you all right?" Despite his claim that he was concerned as to whether she was all right, the Respondent asserted that he did not even open the door slightly, much less enter the bathroom. Linares testified that the Respondent did enter the bathroom, that he stood with his back up against the door (the only exit), that he licked her lips with his tongue, that he grabbed her breasts, and that he told her, "Suck my dick."

The believability of Linares' claims is enhanced by a complete lack of any apparent invention, embellishment or even exaggeration in her testimony regarding what occurred inside the bathroom. Linares testified that the only coercive and physically threatening action the Respondent engaged in was to stand with his back against the door to the bathroom blocking her ability to leave the bathroom. Also, she did not testify that she got down on her knees, or that she had sucked the Respondent's penis as he had directed her to do. Rather, she testified that although she bent down, she did not fall to her knees and that although she "licked" his penis and "put it in my mouth once," she immediately withdrew it from her mouth, stopping well short of performing a complete

oral sex act, and then “just told him I wanted to leave because I was so uncomfortable.” She further testified that he responded to her statement that she “wanted to leave” by putting his penis back inside his pants, closing his zipper and escorting her out of the bathroom back into the office area.

The Respondent asserted that Linares’ testimony should be rejected because she acknowledged that she was upset with the Respondent after she realized that she was being charged with assaulting [REDACTED] because she considered herself the victim of an attack perpetrated by [REDACTED]. However, if Linares was inventing a false story to punish the Respondent for having arrested her, it is likely that she would have attempted to portray the Respondent in the worst light possible by asserting that he had used or threatened to use physical force against her, not just that he had blocked her exit from the bathroom. Similarly, her testimony that when she told him that she “wanted to leave” (even though she had not fully complied with his demand to “suck my dick” and even though he had not ejaculated), he reacted not by threatening her and ordering her to continue performing fellatio, but, rather, by closing his zipper and taking her out of the bathroom and back into the office area, also has the ring of truth.

Also, Linares’ claim that the Respondent told her that he “could make records and paperwork disappear” and that he could “make everything disappear,” so that there would be no record that she had been present at the 44 PDS at all on November 6, 2005, has support in the record because it is consistent with the Respondent’s unexplained failure to enter into the PDS arrest log that he had arrested Linares, as he was required to do.

In addition, I credit the sincerity of Linares’ testimony regarding why, even though she was [REDACTED], she took the time to appear at the United

States Attorney's office [REDACTED] to testify (via video conferencing) even though she knew that being questioned about this incident would be personally "aggravating" because she wanted to put this incident behind her and did not want to have "to think about" what the Respondent did to her on November 6, 2005. Linares' assertions that she was testifying because the Respondent had "used me" and "manipulated me" and because she believed that she was "doing the right thing" by testifying against the Respondent because, "I don't want what happened to me to happen to anyone else," all have the ring of genuineness.

The Respondent also asserted that Linares' testimony should be rejected because Linares' complaint against the Respondent was not lodged until March 16, 2006 (regarding an incident that had occurred on November 6, 2005), and because she acknowledged that after November 6, 2005, she placed 38 cell phone calls to the 44 PDS in an attempt to speak to the Respondent. However, I credit her explanations that the only reason she had called the Respondent was because she was concerned about the status of the arrest charge, that she had called 38 times only because it was difficult to contact the Respondent, and that she waited until her criminal case was resolved to lodge her complaint against the Respondent because she believed that he still had the ability to influence the outcome of her criminal charge.

Also, the mere fact that the Bronx District Attorney's office declined to prosecute her complaint against the Respondent and that she did not appear at the United States Attorney's office in [REDACTED] to offer video conferencing testimony prior to June 1, 2007, do not serve to refute her testimony.

Moreover, the Respondent offered no plausible explanation for why he left work early immediately after Linares entered the 44 Precinct to lodge the complaint that led to these charges. The Respondent admitted that he was on duty on March 16, 2006, that he was present inside the 44 PDS, and that after he was informed that Linares had come into the 44 Precinct to file a complaint against him, he took “personal” lost time and left the 44 Precinct. Because the Respondent’s explanation for why he did not remain on duty and attempt to find out why Linares was filing a complaint against him makes no sense, I can only conclude that he knew full well that she had come there to report that on the day he had arrested her he had directed her to perform oral sex on him inside a bathroom at the 44 Precinct.

Finally, with regard to the “forcible compulsion” element contained in Specification No. 5, I find that the Respondent’s action of grabbing Linares’ breast and physically blocking the bathroom door with his body so that Linares could not get out constituted an implied threat of force which, Linares testified, placed her in fear of physical injury.² As a result of this state of mind, which was produced by the Respondent’s conduct, I find that when Linares placed her mouth on the Respondent’s penis it was as a result of lack of consent caused by forcible compulsion.³

Thus, I find the Respondent Guilty of Specification Nos. 5, 6, 7 and 8.

With regard to Negroni, the Respondent corroborated her testimony that on August 1, 2005 (after she decided not to pursue charges against [REDACTED] she told him that she had become aware that his first name was Daniel and that she asked him when

² See Penal Law sections 130.00(8) and 130.05.

³ See People v. Coleman, 42 NY2d 500 and People v. Thompson, 72 NY2d 410.

██████████ would be released from jail, whether the processing of her husband could be speeded up so that he would not miss his flight, and whether there was anything he could personally do "to make it quicker." The Respondent further corroborated her testimony that he drove her to her apartment building on the ██████████ that he entered her apartment with her, and that they were alone together inside the living room until her roommate "eventually" came out of her bedroom. He also corroborated Negroni's testimony that when they entered her apartment, a door to a room was closed, that he "looked around" to see if anyone else was inside the apartment and saw "nobody" there, and that he believed that he and Negroni were alone until her roommate "eventually" opened the closed door and came out.

Thus, the Respondent corroborated numerous, specific factual details contained in Negroni's testimony regarding their interaction August 1, 2005.

He denied her claims that he had sat down in her living room holding the TV remote control, that ██████████ called while he was there, that she smoked "a joint" in his presence, that he told her that he could get her husband out of jail if she gave him a "blow job," and that she performed oral sex on him.

Negroni's candid admission that she smoked "a joint" has the ring of truth and her claim that she agreed to perform oral sex on the Respondent because he told her that if she did this he would get her husband out of jail is consistent with the undisputed fact that she had asked the Respondent whether ██████████'s processing could be speeded up and whether there was anything he could personally do "to make it quicker."

The Respondent's direct corroboration of so many of the details contained in Negroni's testimony regarding their interaction on August 1, 2005, largely negates the

Respondent's argument that Negroni's testimony should be disregarded in light of her admissions that she has had psychological problems regarding an anxiety disorder, that she takes medications for depression, for her nervous system, and to help her sleep, that she has a prior criminal record for prostitution and drug use, and that she sometimes forgets things.

Although Negroni is not a model citizen and clearly has had her problems, her testimony was credible and the Respondent offered no plausible explanation for why Negroni would falsely invent a claim that she had agreed to perform oral sex on him because he told her that he would get her husband out of jail. On the contrary, the Respondent asserted that Negroni liked him. He also claimed that she was grateful because he had done her the favor of driving her home and entering her apartment with her. The Respondent's claim that (when he drove her home and entered her apartment with her) he was merely assisting a complainant in a case that was assigned to him and that he had no plans to have her engage in a sexual act, must be examined in light of his failure to sign out of court and his failure to make an entry in his activity log that he drove Negroni home from court. As a result of these failures to document his actions and his whereabouts, Department records reflected that he was still at court when he was actually inside Negroni's apartment.

Based on the above analysis, I credit Negroni's testimony that she agreed to perform and did perform oral sex on the Respondent on August 1, 2005, because the Respondent told her, "I can get your husband out of jail if you give me something," and that he then told her that the "something" was "a blow job."

This misconduct is the subject of Specification No. 1, which charges that the Respondent, while on-duty on or about August 2, 2005, at Negroni's residence, committed the crime of Official Misconduct, Penal Law section 195.00(1), and also engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that, "with the intent to obtain a benefit, he committed an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act was unauthorized," in that he solicited and received oral sex from Negroni "on *two* (emphasis added) occasions," in exchange for "his expediting the processing of" Negroni's "husband through Criminal Court."

Negroni testified that she agreed to perform oral sex on the Respondent on August 1, 2005, because the Respondent told her that he could get her husband out of jail if she gave him a "blow job." However, Negroni testified that she did not agree to perform oral sex on the Respondent on August 2, 2005, and that she only did so because she became scared after the Respondent "fiddled" with his firearm. Thus, Negroni agreed to perform oral sex on the Respondent because the Respondent said that he would get her husband out of jail on only one occasion, not on two occasions as charged. Also, the Department did not prove that the Respondent actually "*committed* (emphasis added) an act relating to his office" by taking an action which speeded up the processing of Negroni's husband through Criminal Court and which, thereby, resulted in the "*expediting* (emphasis added) of the processing" of Negroni's "husband through Criminal Court." Thus, the Department failed to prove an element of the crime of Official Misconduct.

As a result, I find the Respondent Guilty of that part of Specification No. 1 that charges that he engaged in conduct prejudicial to the good order, efficiency and discipline

of the Department in that he solicited and received oral sex from Negroni, whose husband he had just arrested and processed.

Under Specification No. 2, the Respondent is charged with Criminal Sexual Act in the First Degree (a class B felony) and with engaging in conduct prejudicial to the good order, efficiency and discipline of the Department, in that while on-duty on or about August 2, 2005, at Negroni's residence, he engaged in oral sexual conduct with Negroni by forcible compulsion, in that she placed her mouth on his penis.

I credit Negroni's testimony that on August 2, 2005, she was alone at home between 8:00 a.m. and 9:00 a.m., when the Respondent telephoned her at her residence and told her, "I need to see you before court." Negroni agreed that he could come over to her residence because she thought he had information relating to [REDACTED] but when she let the Respondent into her apartment, he told her that he had been thinking about her and how sexy she was and that he wanted another "blow job." I credit her claim that when she told him, "No," he then unbuttoned his jacket and "started fiddling with his gun" by touching and tapping it, that she became "scared" and felt she had no choice but to comply, and that after she performed oral sex on him, he warned her, "You're not going to tell anybody about this, right? Because nobody can stop a bullet."

Negroni acknowledged that she was upset with the Respondent because she believed that the Respondent had lied to her by giving her the impression that Fontenez would be released and would be coming home with Negroni and would not be processed regarding her complaint because she had stated that she was not pressing charges against him. However, the limited nature of the subtle threat of force described by Negroni has the ring of genuineness because if Negroni had been inventing an allegation against the

Respondent to get back at him for processing [REDACTED] she could easily have claimed that the Respondent had withdrawn his firearm.

With regard to the element of forcible compulsion, Negroni testified that after she had told him, "No," he unbuttoned his jacket and "started fiddling with his gun" by touching and tapping it, that she became "scared" and felt she had no choice but to comply and then performed oral sex on him. Although the threat of force described by Negroni was subtle in nature it, nonetheless, constituted "forcible compulsion" because it was an implied threat of force which placed Negroni in fear of physical injury.⁴ As was the case with Linares, Negroni's "scared" state of mind was produced by the Respondent's physical conduct. As a result, I find that when Negroni performed oral sex on the Respondent on August 2, 2005, it was the result of a lack of consent caused by forcible compulsion.⁵

The Respondent argued that Negroni's testimony that she was forcibly compelled to perform oral sex on the Respondent on August 2, 2005, should be rejected based on Delgado's testimony that when he interviewed Negroni she "recanted" her original claim that she had been forced to perform oral sex and that she told him that her husband, who she was afraid of, had ordered her to claim that the Respondent had forced her to perform oral sex. However, I find that Delgado's testimony about what Negroni told him during his interview does not serve to refute any of Negroni's trial testimony.

Delgado acknowledged that Negroni never told him that she had lied when she asserted that she had performed oral sex on the Respondent. Thus, Negroni's testimony that she agreed to perform oral sex on the Respondent on August 1, 2005, because the

⁴ See Penal Law sections 130.00(8) and 130.05.

⁵ See People v. Coleman, 42 NY2d 500 and People v. Thompson, 72 NY2d 410.

Respondent told her that he could get her husband out of jail if she gave him a "blow job," was not refuted by Delgado's testimony. Delgado further acknowledged that because his interview of Negroni was interrupted by [REDACTED] he was unable to conduct a full interview. Thus, Delgado obtained only a partial version of Negroni's whole story, a story which she was able to fully present at trial. As a result, I find that the "recantation" of forcible compulsion described by Delgado applies only to Negroni's testimony regarding performing oral sex on the Respondent on August 1, 2005, not regarding the oral sex she performed on the Respondent the next day.

Although the Respondent denied that he went to Negroni's apartment the next day, he acknowledged that he and Nardi visited at least one location on the Grand Concourse that day and he admitted that they did not enter into the movement log every address they may have stopped at that day. Nardi acknowledged that a detective driving to [REDACTED] would pass [REDACTED] on the way to [REDACTED]. Since Nardi had no independent recollection of what route he and the Respondent took when they drove to [REDACTED] or whether they stopped en route to that address, Nardi's testimony provides no corroboration for the Respondent's claim that they did not stop at [REDACTED] and that he did not enter Negroni's apartment that day. Also, the fact that the Bronx District Attorney's office declined to prosecute Negroni's complaint against the Respondent, that Negroni asserted that the Respondent had put [REDACTED] in jail for no reason and that Negroni mentioned for the first time that she smoked "a joint" when the Respondent was present in her apartment on August 2, 2005, at this trial, do not serve to refute her otherwise credible trial testimony. Also, Negroni credibly explained that her four-month delay in making a complaint

against the Respondent was the result of the fact that she only called her lawyer, who reported the incident to this Department, after she had gone to her psychologist who told her that she should report what the Respondent had done.

Based on the above analysis, I credit the testimony offered by Negroni. I have also credited the individual testimony that was offered by Linares.

I find it significant that these two women, who do not know each other,⁶ who come from different backgrounds and who had separate interactions with the Respondent at different locations and under different circumstances, offered very similar accounts regarding what the Respondent had said to them and what he did to them. The record is devoid of any evidence which disputes, much less refutes, the independent claims made by Negroni and Linares that they have never met and have never spoken to each other. Yet they both stated that the Respondent had flirted with them and they both testified that the Respondent had not requested that they do anything or perform any sexual act other than oral sex. As a result, each woman's individual, independent testimony constitutes strong corroborative evidence of the credibility of the other's testimony and, taken together, their mutually corroborative accounts constitute highly probative evidence of the Respondent's guilt. Moreover, it is not disputed that the Respondent failed to follow Department procedures with regard to making an entry in the 44 Precinct Detective Squad arrest log regarding his arrest of Linares and that he made no activity log entries with regard to his visits to Negroni's residence or his arrest of Linares.

Based on the mutually corroborative testimony of Linares and Negroni, the Respondent is found Guilty of Specification Nos. 1 (in part as indicated), 2, 5, 6, 7 and 8.

⁶ Although, in argument, Respondent's counsel noted that Negroni and Linares reside in the same area, they both denied that they had ever met and nothing in the record refutes these denials.

Specification No. 3

Under Specification No. 3, it is charged that the Respondent committed the crime Sexual Abuse in the First degree (a class D felony), and that he engaged in conduct prejudicial to the good order, efficiency and discipline of the Department, in that while on-duty on or about August 2, 2005, at Negroni's residence, he subjected Negroni to sexual contact by forcible compulsion, in that she placed her mouth on his penis. Since the wording and subject matter of this charge is the same as that charged under Specification No. 2, and since this charge constitutes a lesser crime in relation to the crime as charged in Specification No. 2, Criminal Sexual Act in the First Degree (a class B felony), and since the Respondent's misconduct of forcing Negroni to perform oral sex on him is adequately addressed by Specification No. 2, it is recommended that Specification No. 3 be Dismissed.

Specification No. 4

It is charged that the Respondent on August 1, 2005, failed and neglected to notify the 44 Precinct Desk Officer "about the arrest he made (of Fontenez) upon entering the 44 Precinct with the prisoner," and failed to sign out of court as required. Initially, I would note that the Department does not dispute that the Respondent never entered the 44 Precinct with his prisoner (██████████). Rather, the Respondent never had to leave his desk to arrest ██████████ because Fontenez voluntarily entered the 44 PDS accompanied by Negroni. Moreover, Lieutenant Ruane testified that he had instructed the Respondent, and all other members assigned to the 44 PDS, not to notify the 44 Precinct Desk Officer

regarding PDS arrests. As result, I find the Respondent Not Guilty of having failed and neglected to notify the 44 Precinct Desk Officer "about the arrest he made upon entering the 44 Precinct with the prisoner."

Since the Respondent stipulated that the Bronx Criminal Court prisoner log for August 1, 2005, contains no entry that a sign-out time was entered by the Respondent when he left, I find the Respondent Guilty of that part of Specification No. 4 that charges that he failed to sign out of court as required on August 1, 2005.

Specification No. 9

It is charged that the Respondent on November 6, 2005, failed to notify the Desk Officer about the arrest he made upon entering the 44 Precinct with the prisoner, failed to make required entries in the Detective Squad Arrest Log, and failed to make activity log entries documenting the arrest as required.

As noted above under Specification No. 4, Lieutenant Ruane testified that had instructed the Respondent not to notify the 44 Precinct Desk Officer when he entered with a prisoner, but rather to enter the arrest in the Detective Squad Arrest Log and to make activity log entries documenting the arrest as required. As a result, I find the Respondent Not Guilty of having failed and neglected to notify the 44 Precinct Desk Officer about the arrest he made of Linares.

The Respondent stipulated that the 44 Precinct Detective Squad log covering the period November 5, 2005 to November 6, 2005, contains no entry regarding his arrest of Linares, and that he made no activity log entries with regard to his arrest of Linares. As a result, I find the Respondent Guilty only of that part of the charge that alleges that the

Respondent failed to make an entry in the 44 Precinct Detective Squad arrest log regarding his arrest of Linares and that he failed to make activity log entries regarding this arrest.

PENALTY

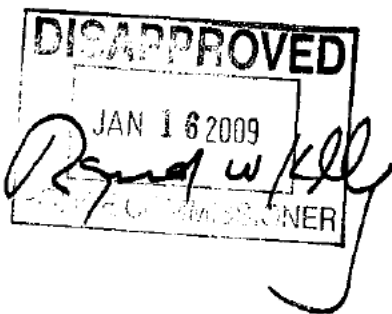
In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974).

The Respondent was appointed to the Department on February 28, 1994. Information from his personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.


The Respondent has been found Guilty under these Specifications of having the complainant in a criminal case he was assigned (Elba Negroni) perform oral sex on him on two consecutive days, the second time by forcible compulsion, and with grabbing the breast of a women he had arrested and was processing (Rosa Linares) and intimidating her to perform oral sex on him in a bathroom inside the 44 Precinct.

The Respondent's on-duty misconduct reflects poorly on his moral character and his fitness to serve as a member of this Department. Moreover, he caused embarrassment to this Department and brought the reputation of the Department into disrepute.

I recommend that the Respondent be DISMISSED from the New York City Police Department.



Respectfully submitted,


Robert W. Vinal
Assistant Deputy Commissioner - Trials